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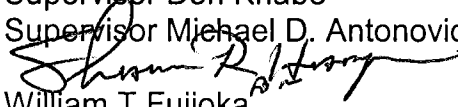
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August 15, 2008

To: Supervisor Yvonne B. Burke, Chair
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Supervisor Zev Yaroslavsky
Supervisor Don Knabe
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From: William T Fujioka
Chief Executive Officer

RECOMMENDATION TO OPPOSE PROPOSITION 5, "THE NONVIOLENT OFFENDER REHABILITATION ACT OF 2008" (ITEM NO. S-1, AGENDA OF AUGUST 19, 2008)

Item No. S-1 on the August 19, 2008 Board agenda is a recommendation from the Countywide Criminal Justice Coordination Committee that your Board oppose Proposition 5, the "Nonviolent Offender Rehabilitation Act of 2008."

Proposition 5 would create a new juvenile drug treatment program and change the State's current parole system, including revised parole terms, and establish new programs for offenders returning to the community. It would create a tiered, three-track drug treatment diversion program to replace three existing programs. The programs include drug diversion for first-time nonviolent drug offenders, the California Substance Abuse and Crime Prevention Act of 2000 (Proposition 36), and drug courts. Proposition 5 would mandate State funding for these programs, with adjustments for inflation and changes in population, thereby reducing State funds available for other existing programs which the County operates.

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Three-Track Drug Treatment System

Proposition 5 establishes a drug treatment system which diverts offenders into one of three possible treatment programs depending on the level of their prior offense.

Track I: Offenders with no prior violent or serious offenses, but who may have prior drug offenses. Track I is a six to 18 month pre-trial diversion program that does not require probation supervision. An offender who completes an assigned drug treatment program and stays out of trouble would have the charges dismissed.

Track II: Offenders who have been convicted of a nonviolent drug possession offense. Track II is a modified form of existing Proposition 36 programs which would divert eligible participants to treatment and probation for up to a year, or 24 months with extensions. Offenders could not participate in Track II if they have had a violent or serious felony on their record during the prior five years. Track II allows diversion of offenders who were also convicted at the same time of a non-drug related crime. However, offenders with five or more offenses in the prior 30 months (other than infractions) would be excluded from diversion under Track II.

Track III: Offenders who have committed a nonviolent drug possession violation, as well as those who have committed other types of crimes but appear to have a drug problem. Track III is similar to existing drug court programs, and would provide treatment and probation supervision in lieu of incarceration in prison or jail for up to 18 months, or 24 months with an extension. Judges would generally be provided discretion as to which nonviolent drug possession offenders would be admitted, except that a drug offender excluded from Track II for having five or more prior felonies or misdemeanors in the prior 30 months must be placed in Track III.

Additional Provisions

Descriptions of the new juvenile program, changes to State parole and rehabilitation programs, marijuana possession penalties, and mental health treatment requirements contained in Proposition 5 are provided in the Attachment.

Funding

Proposition 5 would require an allocation of \$460 million annually from the State General Fund to the Substance Abuse Treatment Trust Fund (SATTF) for support of the three-track drug treatment diversion program and the program for juvenile treatment services, with periodic adjustments for inflation and changes in population. Proposition 36 alone is currently funded at \$100 million. Proposition 5 would allow the State to impose a

requirement for matching funds in order for counties to receive SATTF funds. After funds are set aside for certain administrative and program costs, the measure designates 15 percent of the remainder for Track I programs, 60 percent for Track II programs, 10 percent for Track III programs, and 15 percent for juvenile programs.

Potential County Impacts

California State Association of Counties. While acknowledging the need for additional treatment funding, the California State Association of Counties (CSAC) notes in a recent report that Proposition 5 would earmark additional State General Fund revenues for these programs without new revenues. Given the State's fiscal outlook, the measure may result in additional reductions to programs also supported by the State General Fund, and could result in cuts to other county programs. CSAC further cautions that it is not clear how the provisions of Proposition 5 will affect the distribution of Proposition 63 funds at the local level, and indicates that Proposition 63 requires counties to undergo extensive community input processes to determine programming funded by the Proposition.

Legislative Analyst's Office. According to the Legislative Analyst's Office (LAO), Proposition 5 could eventually result in an increase in State costs exceeding \$1 billion annually primarily for administration of the expansion of drug treatment and other services provided for eligible offenders. However, the LAO also indicates that the measure could result in a reduction in State operating costs that could eventually exceed \$1 billion annually due mainly to reductions in prison and parole supervision caseloads.

The LAO indicates that Proposition 5 would provide more than \$300 million in additional funding annually for drug treatment diversion programs and juvenile programs that would be operated mainly by counties. While counties are likely to incur increased expenditures over time for the programs, the LAO indicates that the increases are generally in line with the allocations that counties would receive. However, the possibility that the State may require counties to provide matching funds to receive SATTF funds, and the provisions requiring use of Proposition 63 funds for mentally ill offenders placed in drug treatment diversion programs could increase county costs. The LAO suggests that some counties could face added capital outlay costs for housing parole violators who would be diverted from prison to jails. However, these costs could be offset by the diversion of drug offenders from jails to treatment in the community. The LAO concludes that the full potential fiscal impact of Proposition 5 on counties cannot be determined.

Affected Departments

The Department of Public Health (DPH) supports efforts to enhance and support drug treatment and to remove the stigma associated with addiction, and Proposition 5 would provide reliable funding to expand service delivery. In addition, the expansion of treatment services for youth will increase the possibility of averting long term substance abuse and criminal behavior.

However, DPH has the following concerns with Proposition 5: 1) reduced penalties for possession of marijuana may serve as a disincentive to pursue early treatment, resulting in more severe involvement in substance abuse; 2) participants will be likely to require an array of ancillary services not reimbursable through the measure; 3) under Tracks I and II no funds may be used for drug testing, which is an important tool used by treatment programs and the courts; 4) any change to Proposition 5 would require a four-fifths vote of the Legislature, which will make it almost impossible to change an ineffective or cumbersome provision; 5) the possibility that offenders could re-offend five times before being incarcerated would limit the courts ability to use jail sanctions as motivation to engage in treatment; and 6) the need to extensively expand and modify information technology systems to meet increased data collection and reporting requirements would result in substantial costs for DPH and other County agencies.

The District Attorney (DA) disputes the argument that Proposition 5 will save billions of dollars in prison costs because there is no reason to believe that Proposition 5 will be any more successful than Proposition 36. The DA cites a UCLA study which found Proposition 36 to have a failure rate of 77 percent, and indicates that those who fail treatment under Proposition 5 will ultimately be incarcerated. The DA states that Proposition 5 will not only fail to produce the desired results, but it will cost taxpayers billions of dollars, needlessly clog the courts, divert scarce resources from those who really want sobriety to those who simply want a "Get-Out-of-Jail-Free" card, and lead to a significant increase in crime. The DA also is concerned that Proposition 5 will decrease funding for the County's highly successful drug court programs.

The Probation Department agrees that Proposition 36 has been ineffective and that Proposition 5 will be even worse, noting that it eliminates probation supervision for second time offenders. Offenders could commit more new offenses and have more drug-related violations while in the various tracks before custody sanctions and custody treatment may be ordered. The Probation Department cautions that commitment of over \$1 billion from the State General Fund without a new revenue source, as estimated by the LAO, could result in the reduction of State funding for proven juvenile justice and other public safety programs.

The Department of Mental Health indicates that offenders need treatment, however, Proposition 5 would mandate the use of Mental Health Services Act (Proposition 63) funding to provide mental health treatment to adults in drug treatment programs, except for parolees. DMH is opposed to any effort to change Proposition 63 as it was originally approved by the voters.

The Sheriff indicates that while the intent of Proposition 5 is good, the consequences are unlikely to be beneficial, noting that those in the criminal justice system were not included in the development of the measure. The Sheriff indicates that the State of California is trying to close a \$15 billion budget deficit and that this is not a good time to introduce new programs requiring mandatory funding. The Sheriff also is concerned that Proposition 5 would allow individuals to continue to use drugs while receiving treatment, which is not an effective way to deal with addiction.

The Public Defender disapproves of the provision of Proposition 5 that requires individuals to be convicted in order to receive treatment, noting that successful drug treatment programs allow individuals to go into treatment almost immediately upon arraignment. The Public Defender supports in-custody treatment, which is not funded by Proposition 5, indicating that some drug addicted individuals need a disablement strategy for a short period so that they will not have access to drugs. The Public Defender also is concerned that Proposition 5 does not provide funding when medical detoxification is needed for those who are incarcerated and going through withdrawal.

The District Attorney and the Sheriff oppose Proposition 5. The Probation Department and the Department of Mental Health recommend opposition to Proposition 5. Opposition to Proposition 5 is consistent with prior Board action on October 31, 2000 to oppose Proposition 36, the California Substance Abuse and Crime Prevention Act of 2000. The Department of Public Health and the Public Defender have a neutral position on Proposition 5.

Support and Opposition

Proposition 5 is sponsored by the Drug Policy Alliance Network, the advocacy group that sponsored Proposition 36, which provided for substance abuse treatment instead of incarceration for certain low-level offenders, and was approved by the voters in November 2000. It is supported by the California Association of Alcohol and Drug Program Executives, the California Society of Addiction Medicine, the California Public Defenders Association, County Alcohol and Drug Program Administrators' Association of California, the California Democratic Party, the League of Women Voters of California, and the Los Angeles County Narcotics and Dangerous Drugs Commission.

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It is opposed by the District Attorney, the Sheriff, the Countywide Criminal Justice Coordination Committee, California Narcotics Officers Association, National Association of Drug Court Professionals, Community Anti-Drug Coalitions of America, California Association of Drug Court Professionals, Mothers Against Drunk Driving, and the California Police Chiefs Association. The Executive Committee of the California State Association of Counties (CSAC) voted to recommend that the CSAC Board of Directors oppose Proposition 5 at their next meeting on September 11, 2008 because earmarking State funds in this manner is fiscally imprudent.

WTF:GK
MAL:MS:hg

Attachment

c: Executive Officer, Board of Supervisors
 County Counsel
 District Attorney
 Sheriff
 Alternate Public Defender
 Countywide Criminal Justice Coordination Committee
 Department of Mental Health
 Department of Public Health
 Probation Department
 Public Defender

PROPOSITION 5: THE NONVIOLENT OFFENDER REHABILITATION ACT OF 2008

New Juvenile Treatment Program

Proposition 5 creates a new county-operated program for nonviolent youth under age 18 deemed to be at risk of committing future drug offenses. The program would provide drug treatment, mental health medication and counseling, family therapy, educational stipends for higher education, employment stipends, and transportation services.

Changes to State Parole and Rehabilitation Programs

This measure makes a number of changes to the state's current parole system, affecting which offenders can be returned to prison and jail for parole violations, revising and often shortening parole terms, changing parole revocation procedures, and requiring new programs for offenders returning to the community. Proposition 5 generally prohibits certain parolees from being returned to State prison for technical or misdemeanor parole violations, but it would allow revocation of parolees who committed felony violations of parole, were classified high-risk by the California Department of Corrections and Rehabilitation (CDCR), or have violent or serious offenses on their record. Proposition 5 would allow offenders to request up to a year of rehabilitation services within one year after they are discharged from parole. These services would be provided by county probation departments and reimbursed by CDCR.

Proposition 5 creates a new 21-member Parole Reform Oversight and Accountability Board with authority to review, direct, and approve the rehabilitation programs and to set parole policies. State agencies must collect and report information on the inmate and parole populations and the effectiveness of rehabilitation programs for these offenders, and commission research by a public university on parole policies and practices.

Change in Marijuana Possession Penalties

Proposition 5 would make the possession of less than 28.5 grams of marijuana by either an adult or a minor an infraction (similar to a traffic ticket) rather than a misdemeanor. Adults would be subject to fines which would be used to provide additional support for the new youth programs created by the measure.

Mental Health Provisions

Proposition 5 would prohibit the denial of drug treatment services to a person due to a psychiatric or developmental disorder. While mental health treatment may be required in addition to drug treatment, it may not be provided in lieu of all other services. Adult offenders, except for parolees, with both a serious mental illness and a substance abuse problem who are in court-supervised drug treatment programs would be considered for mental health services paid for by the Mental Health Services Act (Proposition 63), a 2004 initiative that expanded community mental health services.